FILED

00 83 JUL 5 2000

OFFICE OF THE

No. ———

IN THE

Supreme Court of the United States

ROBERT CONTINI; JOHN BARNES; JOHN KROMMENHOEK; RICHARD MULLER; JERRY MCCORMICK; LAWRENCE MCDERMOTT; JOHN DOE (name being fictitious); TEAMSTERS LOCAL 641 PENSION FUND; PETER VAN LENTEN; ROBERT CIRONE, as Trustee of the Teamsters Local 641 Pension Fund; THOMAS FLANNERY, Trustee of the Teamsters Local 641 Pension Fund,

Petitioners,

vs.

STANLEY SMITH,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

GARY A. CARLSON *
LYNCH MARTIN KROLL
300 Executive Drive, Suite 010
West Orange, New Jersey 07052
(973) 243-0100

* Counsel of Record

Counsel for Petitioners

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

51pp

QUESTIONS PRESENTED

Do the minimum vesting standards set forth in Section 203 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1053, apply to pro-rata pension benefits?

May an employee pension benefit plan disregard, for vesting purposes, an employee's years of service with an employer during the period of time when that employer did not maintain the plan or a predecessor plan?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
STATUTE INVOLVED IN THIS CASE	1
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	5
ARGUMENT 1	
THE THIRD CIRCUIT'S HOLDING ALTERS ERISA'S MINIMUM VESTING STANDARDS	5
ARGUMENT 2	
THE THIRD CIRCUIT HAS DISREGARDED AN IMPORTANT COMPONENT OF ERISA'S MINIMUM VESTING STANDARDS	7
CONCLUSION	9
APPENDIX	
Appendix A—Opinion of the United States Court of Appeals for the Third Circuit filed March 9, 2000	1a

TABLE OF CONTENTS—Continued

Page

Appendix B—Judgment of the United States Court of Appeals for the Third Circuit filed March 9, 2000 ..... 18a

Appendix C—Amended Judgment of the United States Court of Appeals for the Third Circuit filed April 3, 2000 ..... 20a

Appendix D—Opinion of the United States District Court for the District of New Jersey filed April 9, 1999 ..... 22a

Appendix E—Order of the United States District Court for the District of New Jersey filed April 9, 1999 ..... 34a

Appendix F—Order of the United States Court of Appeals for the Third Circuit denying petition for rehearing filed April 10, 2000 ..... 35a

TABLE OF AUTHORITIES

Cases Page

Central States Pension Fund v. Gerber Truck Service, Inc., 870 F.2d 1148 (7th Cir. 1989) (en banc) 7

Helms v. Local 705 Int'l Bhd. Teamsters Pension Plan, 1999 WL 965230 (N.D. Ill. Sept. 30, 1999) 6

Nachman Corp. v. Pension Benefit Guaranty Corp., 446 U.S. 359 (1980) 5, 6

Statutes

ERISA § 203, 29 U.S.C. § 1053 1
ERISA § 203(a), 29 U.S.C. § 1053(a) 2, 6
ERISA § 203(a)(2)(A), 29 U.S.C. §1053(a)(2)(A) 8
ERISA § 203(b)(1)(C), 29 U.S.C. § 1053(b)(1)(C) 2, 7, 8
ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1) 4
ERISA § 502(f), 29 U.S.C. § 1132(f) 4
I.R.C. § 411 2
28 U.S.C. § 1254(1) 1
28 U.S.C. § 1331 4

Other Authorities

S. Bruce, *Pension Claims, Rights and Obligations* (2d ed. 1993) 6

M. Gordon, *Introduction: The Social Policy Origins of ERISA*, in Amer. Bar Ass'n, *Employee Benefits Law* (1991) 6

Small Business Job Protection Act, Pub. L. No. 104-188, 110 Stat. 1775 (1996) 2

PETITION FOR WRIT OF CERTIORARI

Petitioners, the trustees and administrator of Teamsters Local 641 Pension Fund, and the Teamsters Local 641 Pension Fund (collectively, the "Local 641 Fund"), request that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the Third Circuit is reported at *Smith v. Contini*, 205 F. 3d 597 (3d Cir. 2000) (App. A). The opinion and order of the District Court in *Smith v. Contini*, Civ. No. 97-2692 (WHW) (D.N.J. April 9, 1999) are not published (App. D and App. E).

STATEMENT OF JURISDICTION

The judgment of the Third Circuit was entered on March 9, 2000 (App. B). The amended judgment of the Third Circuit was entered on April 3, 2000 (App. C). The Third Circuit denied a timely petition for rehearing on April 10, 2000 (App. F).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTE INVOLVED IN THIS CASE

ERISA §203, 29 U.S.C. §1053, provided in part that

> (a) Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.
>
> (1) A plan satisfies the requirements of this paragraph if an employee's rights in his accrued

benefit derived from his own contributions are nonforfeitable.

(2) A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).

(A) A plan satisfies the requirements of this subparagraph if an employee who has completed at least 10 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

* * * *

(b) (1) In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under subsection (a)(2) of this section, all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

* * * *

(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan, defined by the Secretary of the Treasury;[1]

---

[1] The version of the portions of ERISA § 203(a), 29 U.S.C. § 1053(a) set forth above was in effect at all times relevant to Respondent's application for benefits. The Small Business Job Protection Act of 1996, Pub. L. No. 104-188, § 1442, 110 Stat. 1755, 1808 (1996) amended ERISA § 203(a), 29 U.S.C. § 1053(a), to establish a five-year vesting requirement for multiemployer pension plans.

The vesting standards for pension plans are also set forth in I.R.C. § 411.

STATEMENT OF THE CASE

The Local 641 Fund plan is a multiemployer defined benefit employee pension plan. Participants in the plan may become eligible for one of several types of pensions, including a regular pension, an early retirement pension, a supplemental pension, a service pension, a deferred pension, a disability pension, or a pro-rata pension. The eligibility requirements for each type of pension are specified in the plan document and the summary plan description.

Pro-rata pension benefits are designed for employees whose years of employment have been divided between employment covered by the Local 641 Fund's plan and employment covered by one or more plans with which the Local 641 Fund has a reciprocal agreement. Pro-rata pension benefits are for employees who have not worked long enough in employment covered by the Local 641 Funds's plan to be vested. To be eligible for pro-rata pension benefits, an employee must have earned a total of 15 years (or 60 quarters) of pension credits, divided between employment covered by the Local 641 Fund's plan and employment covered by one or more reciprocating plans.

Respondent, Stanley Smith, was employed as a driver in a series of jobs where he was represented by three local unions of the International Brotherhood of Teamsters, and as such was covered by three employee pension benefit plans. For approximately nine months in 1965, he was employed by Nassau Suffolk Frozen Foods, Inc. at its terminal in Bronx, New York, where he was represented by Teamsters Local 202 and covered by the Teamsters Local 202 pension plan. He eventually obtained regular employment with Eastern Express, at its terminal in Manhattan, where he was represented by Teamsters Local 816 and covered by the Teamsters Local 816 pension plan. When Eastern Express relocated the ter-

minal from Manhattan to Elizabeth, New Jersey, in approximately 1973, Smith continued his employment with Eastern Express, at the Elizabeth terminal. Teamsters Local 641 soon replaced Teamsters Local 816 as the collective bargaining representative for the drivers at the terminal, including Smith, and accordingly, those drivers become participants in the Local 641 Fund's plan. Eastern Express ceased to operate in May, 1977, and consequently Smith's employment by Eastern Express ended at that time.

Smith submitted an application for benefits, dated November 11, 1993, to the Local 641 Fund. Based upon the information contained in his application, and information obtained from the Teamsters Local 202 pension plan and the Teamsters Local 816 pension plan, with which the Local 641 Fund had reciprocal agreements, the Local 641 Fund determined that Smith had earned a total of 44 quarters, or 11 years, of combined pension credits. It determined, in particular, that he earned two quarters in the Local 202 plan, 26 quarters in the Local 816 plan, and 16 quarters in the Local 641 Fund's plan. Because Smith had earned less than the 15 years of combined pension credits required for a pro-rata pension, the Local 641 Fund concluded that Smith was not eligible for pro-rata pension benefits from the Local 641 Fund.[2]

Smith filed a complaint in District Court by which he sought pension benefits from the Local 641 Fund based upon eleven years of pension credits. The District Court had jurisdiction over the action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1), ERISA § 502(f), 29 U.S.C. § 1132(f), and 28 U.S.C. § 1331. The District Court dismissed the complaint. It held that the provisions in the Local 641 Fund's plan pertaining to pro-rata pensions do not violate ERISA's

---

[2] Smith had earned 16 quarters of credit in employment covered by the plan of the Local 641 Fund, and thus his accrued benefit in the plan of the Local 641 Fund was not vested.

minimum vesting standards, and that the Local 641 Fund could disregard years of service performed for an employer during the period when the employer did not maintain the Local 641 Fund's plan or a predecessor plan.

Smith filed a timely appeal with the Third Circuit. On March 9, 2000, the Third Circuit issued its Opinion and Judgment, reversing the part the District Court. The Third Circuit held that the Local 641 Fund's plan was not in compliance with ERISA's minimum vesting standards to the extent that the plan required that a participant must accumulate at least 15 combined pension credits to be eligible for a pro-rata pension. The Third Circuit denied the Local 641 Fund's request for rehearing on April 10, 2000.

REASONS FOR GRANTING THE WRIT

The Third Circuit has resolved, incorrectly, an important question of federal law that has not been, but should be, settled by this Court. Pro-rata pension benefits, by definition, are for employees who are not vested, because they have not worked long enough in employment covered by a particular plan to satisfy the vesting requirement. The Third Circuit has decided that ERISA's minimum vesting standards should apply to pro-rata pension benefits. The holding of the Third Circuit, if left undisturbed, will increase the amount of pro-rata pension benefits, to the detriment of multiemployer employee pension benefit plans and at the expense of plan participants with substantial periods of employment covered by those plans.

ARGUMENT 1

THE THIRD CIRCUIT'S HOLDING ALTERS ERISA'S MINIMUM VESTING STANDARDS

Congress enacted ERISA, a "comprehensive and reticulated statute," after having studied private pension plans for almost a decade. *Nachman Corp. v. Pension Benefit*

Guaranty Corp., 446 U.S. 359, 361 (1980). The content of vesting schedules had been a particularly contentious issue during the drafting of the legislation. M. Gordon, *Introduction: The Social Policy Origins of ERISA*, in Amer. Bar Ass'n, *Employee Benefits Law* xxvi-xxix (1991). Vesting schedules were set forth in ERISA § 203(a), 29 U.S.C. §1053(a), described by this Court as "a central provision in ERISA". *Nachman Corp., supra* at 367 n. 10. Congress has changed the vesting requirements on several occasions.

In its Opinion, the Third Circuit observed that "we seem not to have had the opportunity to address the specific question presented in this appeal" (App. A at 9a). Indeed, no Court of Appeal had addressed this question, which was, and is, whether ERISA's minimum vesting standards apply to pro-rata pension benefits. [3]

This is a very important issue. Many multiemployer pension plans provide pro-rata pension benefits. S. Bruce, *Pension Claims, Rights and Obligations* 141 (2d ed. 1993). Those plans no doubt require that a participant earn more than ten combined pension credits to be eligible for pro-rata pension benefits. In holding that pro-rata pension benefits are vested, the Third Circuit has extended the reach of ERISA's minimum vesting standards, to create a new vesting regime, different from the one that Congress has so carefully crafted. In so doing, the Third Circuit has increased the number of participants who are entitled to receive pro-rata pension benefits.[4] Many of those participants will receive relatively

---

[3] There appears to be only one other case in which a court has ruled upon the issue, *Helms v. Local 705 Int'l B.hd. Teamsters Pension Plan*, 1999 WL 965230 (N.D. Ill. Sept. 30, 1999), mentioned in the Third Circuit's Opinion (App. A at 13a).

[4] As mentioned above, in note 1, the minimum vesting requirement is now five years. Therefore, in accordance with the Third Circuit's holding in this case, a participant with five years of combined pension credits can be entitled to pro-rata pension benefits.

small benefit payments, because they have earned relatively few pension credits. The amounts paid to the newly-eligible participants will ultimately impact upon other participants, because the plans will be unable to increase benefits, to the extent that the plans must fund the benefits available to the newly-eligible participants. The Third Circuit has changed the actuarial calculus. *See, e.g., Central States Pension Fund v. Gerber Truck Service, Inc.*, 870 F.2d 1148, 1154 (7th Cir. 1989) (en banc) ("[P]ension and welfare plans are insurance vehicles. Insurers *depend* on receiving contributions from persons who collect far in the future or not at all [emphasis in original] . . . . [M]any persons who work in the industry, and have contributions made on their behalfs, will never collect because they do not satisfy the vesting rule (they may quit or die before doing so)".

The case is important, not only because the Third Circuit misapplied ERISA's minimum vesting standards to pro-rata pension benefits, but also because its holding can have a detrimental impact upon the Local 641 Fund, other multiemployer pension plans, and plan participants.

ARGUMENT 2

THE THIRD CIRCUIT HAS DISREGARDED AN IMPORTANT COMPONENT OF ERISA'S MINIMUM VESTING STANDARDS

In applying minimum vesting standards to pro-rata pension benefits, the Third Circuit has sacrificed ERISA § 203(b)(1)(C), 29 U.S.C. §1053(b)(1)(C). That statute provides that a plan may disregard for vesting purposes an employee's "years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan, defined by the Secretary of the Treasury." In the present case, for purposes of determining whether Smith's benefit in the plan of the Local 641 Fund was vested,

the Local 641 Fund took into account Smith's four years of service with Eastern Express, as an employer maintaining the plan of the Local 641 Fund, and, as permitted by ERISA § 203(b)(1)(C), 29 U.S.C. § 1053(b)(1)(C), disregarded the six years of service with Eastern Express during which Eastern Express did not maintain the plan of the Local 641 Fund. (During that time it maintained the Local 816 pension plan).[5]

The Third Circuit rejected the Local 641 Fund's reliance upon ERISA § 203(b)(1)(C), 29 U.S.C. § 1053(b)(1)(C). The Third Circuit explained that "[t]he underling policy goal of ERISA is the protection of retirement benefits" (App. A at 12a). This reason is not persuasive: a statutory provision cannot be disregarded for the sake of advancing "an underlying policy goal". By the same token, the minimum vesting standards as set forth in ERISA § 203, 29 U.S.C. § 1053, including ERISA § 203(b)(1)(C), 29 U.S.C. 1053(b)(1)(C), serve to effectuate ERISA's goal of protecting pension benefits. The courts may prefer different vesting standards, but it is for Congress, not the courts, to change ERISA's vesting standards, and then perhaps only after it carefully considers the actuarial and financial impact upon pension plans of any contemplated change.

---

[5] Smith's benefit in the plan of the Local 641 Fund was not vested, because he had only four years of service in employment covered by the plan. To be vested, he needed, in accordance with ERISA § 203(a)(2)(A), 29 U.S.C. § 1053(a)(2)(A), a minimum of ten years of service in employment covered by the Local 641 Fund's plan.

CONCLUSION

Whether ERISA's minimum vesting standards should apply to pro-rata pension benefits is a question of exceptional importance. It should therefore be settled by this Court. The Local 641 Fund respectfully requests that this petition for a writ of certiorari be granted.

Respectfully submitted,

GARY A. CARLSON *
LYNCH MARTIN KROLL
300 Executive Drive, Suite 010
West Orange, New Jersey 07052
(973) 243-0100

* Counsel of Record

Counsel for Petitioners